

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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ONYX THERAPEUTICS, INC.)
)
 Plaintiff,)
)
 v.)
)
 FRESENIUS KABI USA, INC. AND) C.A. No. 16-988 (LPS) (consolidated),
 FRESENIUS KABI USA, LLC.,) C.A. No. 16-1012 (LPS)
)
 Defendant.)
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CONSENT JUDGMENT

Onyx Therapeutics, Inc. (“Onyx”), and Fresenius Kabi USA, Inc. and Fresenius Kabi USA, LLC. (“Fresenius”), parties in the above-captioned action, have agreed to terms and conditions representing a negotiated settlement of this action and have set forth those terms and conditions in a Settlement Agreement (the “Settlement Agreement”). Now the parties, by their respective undersigned attorneys, hereby stipulate and consent to entry of judgment and an injunction in this action as follows:

IT IS this 7 day of May, 2019:

ORDERED, ADJUDGED AND DECREED as follows:

1. This District Court has jurisdiction over the subject matter of the above action and has personal jurisdiction over the parties.
2. As used in this Consent Judgment, (i) the term “Fresenius Product” shall mean a drug product sold, offered for sale or distributed pursuant to Abbreviated New Drug Application No. 209459, including any supplements or amendments thereto (and defined in greater detail in the Settlement Agreement); and (ii) the term “Affiliate” shall mean, with respect to a Party, any entity or person that, directly or indirectly through one or more intermediaries,

controls, is controlled by, or is under common control with such Party. For purposes of this definition, “control” means (a) ownership, directly or through one or more intermediaries, of (i) more than fifty percent (50%) of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or (ii) more than fifty percent (50%) of the equity interests in the case of any other type of legal entity or status as a general partner in any partnership, or (b) any other arrangement whereby an entity or person has the right to elect a majority of the board of directors or equivalent governing body of a corporation or other entity or the right to direct the management and policies of a corporation or other entity.

3. Except as specifically authorized pursuant to the Settlement Agreement, Fresenius, including any of its Affiliates, successors and assigns, is enjoined from making, having made, using, selling, offering to sell, importing or distributing of the Fresenius Product, to the extent such action would infringe one or more claims of United States Patent Numbers 7,417,042, 7,737,112, and 8,207,125.

4. Compliance with this Consent Judgment may be enforced by Onyx and Fresenius and their successors in interest, or assigns, as permitted by the terms of the Settlement Agreement.

5. This Court retains jurisdiction to enforce or supervise performance under this Consent Judgment and the Settlement Agreement.

6. Fresenius hereby withdraws all factual allegations in its pleadings, including those concerning unclean hands, litigation misconduct, and inequitable conduct, and its foregoing affirmative defenses and counterclaims as well as all other claims, counterclaims, affirmative defenses and demands in this action by either Onyx or Fresenius are hereby dismissed with prejudice and without costs, disbursements or attorneys’ fees to any party.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Megan E. Dellinger

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*Attorneys for Defendants Fresenius Kabi
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May 5, 2019

SO ORDERED this 7th day of May, 2019


CHIEF UNITED STATES DISTRICT JUDGE